

**Declaration of Covenants, Conditions and Restrictions for Yorktown at Saratoga**

This Declaration of Covenants, Conditions and Restrictions for Yorktown at Saratoga (hereinafter referred to as "the Declaration" or "this Declaration"), made this 2<sup>ND</sup> day of SEPTEMBER, 2005, by RH of Indiana, L.P., an Indiana limited partnership (hereinafter referred to as "Declarant"),

WHEREAS, the following facts are true:

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A. Declarant is the owner of that certain real estate located in Hendricks County, Indiana, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Real Estate"). The deed conveying the Real Estate to Declarant was recorded in Book \_\_\_, Pages \_\_\_, as Instrument No. \_\_\_\_\_ on \_\_\_\_\_ in the office of the Recorder of Hendricks County, Indiana;

B. Declarant desires and intends to subdivide the Real Estate into residential lots in order to create a residential community to be known as "Yorktown at Saratoga" (the "Community") and Declarant further desires and intends, but is not obligated, to construct certain improvements and amenities in the Community, including streets, landscaped areas, open spaces, and common areas for the benefit of said Community;

C. Before so subdividing the Real Estate, Declarant desires to subject the Real Estate to certain easements, covenants, restrictions, reserved rights, assessments, charges, and liens as provided herein for the benefit of the Real Estate and each owner of all or any part thereof;

D. Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in such Community and the common areas therein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof;

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in said Community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the recreation, health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

F. Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Yorktown at Saratoga Property Owners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

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NOW THEREFORE, Declarant hereby declares that the Real Estate and any additional real estate which is hereafter made subject to this Declaration by Supplemental Declaration (as defined herein) is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein. The restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Real Estate or any part or parts thereof subject to such restrictions, and shall inure to the benefit of Declarant and its successors in title to the Real Estate or any part or parts thereof. Declarant further reserves certain other rights as more specifically set forth herein.

This Declaration does not and is not intended to create a condominium within the meaning of the Indiana Horizontal Property Law, Indiana Code § 32-25-1, et seq.

#### ARTICLE I

##### Definitions

**Section 1.1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

1.1.1 "Act" shall mean and refer to the Indiana Not-For-Profit Corporation Act of 1971, as amended.

1.1.2 "Applicable Date" shall mean the date which is the earlier of (a) the date on which the written resignation of Declarant as Class B member is delivered to the Secretary of the Corporation or (b) the date Declarant no longer owns any Lot.

1.1.3 "Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time.

1.1.4 "Board" or "Board of Directors" shall be the elected body having its normal meaning under Indiana corporate law.

1.1.5 "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time.

1.1.6 "Committee" shall mean and refer to the "The Yorktown at Saratoga Architectural Control Committee", the same being the committee or entity established pursuant to Section 9.1 of this Declaration for the purposes herein stated.

1.1.7 "Common Area" shall mean those areas (i) designated on current and future Plats as a "Block", "Common Area", "C.A.", other areas designated by the Declarant for the common use and enjoyment of the residents of the Development, and all portions of the Real Estate (including improvements thereto) shown on any Plat which are not Lots and which are not dedicated to the public.

1.1.8 "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, improvement, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Corporation, the performance of any other responsibilities and duties of the Corporation provided herein, assessments imposed by the Master Declaration with respect to the Real Estate, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

1.1.9 "Common Lighting" means the light standards, wiring, bulbs, and other appurtenances, if any, installed to illuminate any Common Area or drive.

1.1.10 "Corporation" shall mean and refer to The Yorktown at Saratoga Property Owners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.

1.1.11 "Declarant" shall mean and refer to RH of Indiana, L.P., an Indiana limited partnership, or its successors, successors-in-title or assigns that take title to any portion of the Real Estate for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant. For purposes of this Declaration, an "affiliate" of the Declarant shall be any entity which has executed a power of attorney authorizing Declarant to exercise control over any portion of the Real Estate, or any part thereof, owned by such entity for the purpose of exercising any of the rights granted to the Declarant under this Declaration or the By-Laws. Notwithstanding any other provision of this Declaration to the contrary, prior to the Applicable Date, all rights and powers vested in Declarant by this Declarant shall remain vested in Declarant, notwithstanding that Declarant may sell or otherwise transfer any or all Lots, or any or all Lots in a Section, to a person or entity engaged in and responsible for the original construction of single-family residences on a Lot.

1.1.12 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (a) the date Declarant no longer owes any Lot within or upon the Real Estate or (b) the date which is three (3) years after the date on which all improvements and installations required by Section 5.3 of the Plainfield Subdivision Regulations, as amended, have been completed and, if applicable, accepted for public maintenance by any appropriate governmental unit or agency thereof.

1.1.13 "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, and the other structures, fixtures, properties, equipment and facilities located in the Real Estate and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Real Estate, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

1.1.14 "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) family.

1.1.15 "Entry Sign" means any sign or structure identifying the Community and the landscaping associated therewith installed by Declarant or the Corporation in any landscape island located in any public right-of-way within and upon the Real Estate or in a public right of way or a Landscape Easement or Thoroughfare Landscape Easement (as that term is defined in the Master Declaration) within and upon the Real Estate.

1.1.16 "Entry Ways" means the structures constructed as an entrance to the Community or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as designated Blocks on a Plat and any other traffic islands dividing a roadway providing access to the Community or a part thereof, and the grassy area surrounding such structures.

1.1.17 "Landscape Easement" means a portion of a Lot denoted on a Plat as a Landscape Easement, either separately or in combination with any other easement designated on such Plat.

1.1.18 "Lot" shall mean any numbered parcel of land shown and identified as a Lot on any Plat.

1.1.19 "Maintenance Costs" means all of the costs necessary to keep the facilities to which the terms applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

1.1.20 "Master Declaration" means the Declaration of Easements, Covenants and Restrictions of Saratoga in the Town of Plainfield, Indiana recorded in Book 147, Pages 667-702, as Instrument No. 8906 in the office of the Recorder of Hendricks County, Indiana (as the same may be amended and supplemented from time to time). Reference is made to the Master Declaration for a description of the rights, restrictions and obligations associated with the Thoroughfare Landscape Easements, Pathway Easements, Drainage Easements, Utility Easements and Sidewalk Easements identified on any Plat and for reference to certain restrictions and covenants applicable to all neighborhoods within Saratoga.

1.1.21 "Member" shall mean and refer to a Person entitled to membership in the Corporation, as provided herein.

1.1.22 "Mortgage" shall mean and refer to the holder of a recorded first mortgage lien on any Lot.

1.1.23 "Mortgagee" shall mean and refer to the holder of a recorded mortgage lien on a Lot or Dwelling Unit.

1.1.24 "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

1.1.25 "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner for

the purpose of exercising all privileges of membership in the Corporation. The term "Owner" as used herein shall include Declarant so long as Declarant shall own any Lot.

1.1.26 "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

1.1.27 "Plat" means a final secondary plat of the Real Estate (as described in Exhibit A) as executed by Declarant and recorded in the Office of the Recorder of Hendricks County, Indiana, as same may be amended and supplemented from time to time, and any subdivision plat(s) for any Additional Real Estate hereafter subjected to the provisions of this Declaration, which subdivision plats are hereafter recorded in the Office of the Recorder of Hendricks County, Indiana (as the same may be amended or supplemented from time to time).

1.1.28 "Regular Assessment" shall mean and refer to assessments levied against all Lots in the Real Estate to fund Common Expenses.

1.1.29 "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.

1.1.30 "Street Lighting" means the light standards, wiring, bulbs, and other appurtenances, if any, installed to illuminate any public road, drive or other public right-of-way.

1.1.31 "Special Assessment" shall mean and refer to assessments levied in accordance with Section 12.5 of this Declaration.

1.1.32 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant or its successors, and recorded in the public records of Hendricks County, Indiana, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Corporation pursuant to Section 2.2 of this Declaration to subject additional property to this Declaration.

ARTICLE II

Declaration of Restriction and Statement of Property Rights<sup>®</sup>

Section 2.1. Declaration. Declarant hereby expressly declares that the Real Estate and any additions thereto pursuant to Section 2.2 below, shall be held, transferred and occupied subject to these Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, (i) by acceptance of a deed from Declarant, or its successors, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and

all other Persons acknowledge the rights and powers of Declarant, the Committee and of the Corporation with respect to these Restrictions, and also, for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant, the Committee, the Corporation, and the Owners and Subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2.2. Additions to the Tract. Declarant shall have the right, and hereby reserves on to itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record in Hendricks County, Indiana a Supplemental Declaration so declaring the same to be part of the Property, which Supplemental Declaration may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplemental Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate. Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

Section 2.3. Property Rights. Declarant hereby declares creates, and grants to every Owner a right and nonexclusive easement of use, access and enjoyment in and to the Common Areas which shall run with and be appurtenant to each Lot, subject to:

2.3.1 this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Corporation;

2.3.2 the right of Declarant (prior to conveyance of the Common Areas to the Association) to grant easements in and to the Common Areas to any political subdivision, governmental authority, or public utility company;

2.3.3 the right of the Corporation to limit the number of guests who may use any recreational facilities within the Common Area, and to adopt rules regulating the use and enjoyment of the Common Area;

2.3.4 the right of the Corporation to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed sixty (60) days for violations of the Declaration, By-Laws, or rules of the Corporation after notice and a hearing pursuant to the By-Laws;

2.3.4 the right of the Corporation to dedicate or transfer all or any part of the Common Area to any political subdivision, governmental authority or public utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer pursuant to these Covenants and Restrictions;

2.3.5 the right of the Corporation to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;

2.3.5 the right of the Corporation to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

2.3.6 any other easements declared, created, granted or reserved elsewhere in this Declaration or in any Plat.

Neither Declarant nor the Corporation shall be responsible for any loss, damage, or injury to property or injury or death to persons arising out of the use of the Common Areas and any equipment and facilities installed by Declarant or the Corporation therein or thereon. The Common Areas and all such equipment and facilities shall be used at the sole risk of the user.

Section 2.4. Common Area. Prior to the conveyance of the last Lot by Declarant, Declarant shall convey all of its right, title, and interest in and to the Common Area to the Corporation by quitclaim deed, and such Common Areas shall then be the property of the Corporation. At all times, without regard to whether title to the Common Areas shall have been conveyed to the Corporation, the Corporation shall be responsible for maintaining the Common Areas and the Maintenance Costs thereof shall be assessed as a Regular Assessment against all Lots subject to assessment. Except for underground utility facilities, no permanent improvements shall be made to or installed on the Common Area other than lighting, seating, walkways, planting structures and fountains or other non-recreational water features. The use of the Common Area shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

Section 2.5. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area. The Corporation shall maintain the Drainage System to the extent not maintained by the Hendricks County Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by the part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Hendricks County Drainage Board. Drainage Easements must be maintained free of structures, landscaping and fencing.

Section 2.6. Common Lighting. Declarant may, but is not obligated to, install Common Lighting in the Real Estate and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Common Lighting and the Maintenance Costs thereof shall be assessed as a Regular Assessment against all Lots subject to assessment.

Section 2.7. Entry Ways and Landscape Easements. The Corporation shall maintain the Entry Ways and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as Regular Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to the Community or a part thereof. All Entry Signs located on an Entry Way shall be maintained at all times in good and slightly condition appropriate to a first class residential subdivision. Unless the Board of Directors determines that all or some of the Landscape Easements shall be maintained by the Corporation and the Maintenance Costs thereof assessed as a Regular Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape Easement neatly cut, cultivated or trimmed and watered as reasonably necessary to maintain the same at all times in a good and slightly condition appropriate to a first-class residential subdivision, and free from little and the growth of weeds and/or other unsightly vegetation, and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot. No trees may be removed from any Landscape Easement unless the removal thereof is otherwise specifically approved by Declarant or any such tree is dead or decayed and dangerous to human health, safety or welfare. Except for underground utility facilities, no permanent improvements shall be made to or installed in any Landscape Easement other than lighting, seating, walkways, planting structures and fountains or other non-recreational water features. Specifically, no structures, play equipment, tree houses, or improvements of any kind, or fences shall be erected or maintained upon said Landscape Easements.



Article III

**Other Improvements**

**Section 3.1. Common Areas.**

3.1.1 **Ownership.** The Common Areas shall remain private, and neither Declarant's execution or recording of an instrument portraying the Common Areas, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

3.1.2 **Density of Use.** Declarant expressly disclaims any warranties or representations regarding the density of use of the Common Areas or any facilities located thereon.

3.1.3 **Obligations of the Corporation.** The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon and, except as otherwise provided herein or in a Supplemental Declaration, shall keep the Common Areas in good, clean, attractive and sanitary condition, order and repair.

3.1.4 **Easements of Enjoyment.** No Person shall have any right or easement of enjoyment in or to the Common Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Unless otherwise provided in a Supplemental Declaration or a Plat, all Owners may use the Common Areas subject to the reserved rights of Declarant and the Corporation.

3.2.5 **Extent of Easements.** The easements of enjoyment created hereby shall be subject to the following:

3.2.5.1 the right of the Corporation to establish reasonable rules<sup>®</sup> for the use of the Common Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Common Area except that no fee shall be charged to those specifically authorized to use such facilities by this Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by this Declaration or a Supplemental Declaration;

3.2.5.2 the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Common Area derives from such Owner's ownership of a Lot to use such portions of the Common Area for any period during which any charge against such Owner's Lot remains unpaid;

3.2.5.3 the right of the Corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Common Area for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;

3.2.5.4 the right of the Corporation to mortgage any or all of the Common Area and the facilities constructed thereon and for the purposes of improvements to, or repair of, the Common Area, the facilities constructed thereon, pursuant to approval of two-thirds (2/3) of the votes of the Members; and

3.2.5.5 the right of the Corporation to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by two-third (2/3) of the votes of the Members agreeing to such dedication or transfer, has been recorded;

3.2.6 Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Common Area may use the Common Area subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

3.2.7 Damage or Destruction by Owner. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot with the knowledge and consent of such Owner, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

3.2.8 Conveyance of Title. Declarant may retain the legal title to the Common Area until the Applicable Date, but shall convey the Common Area free and clear of all liens and other financial encumbrances exclusive of the lien for taxes to yet due and payable, not later than the Applicable Date.

ARTICLE IV



Corporation; Membership; Voting; Functions

Section 4.1. Membership in Corporation. Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

**Section 4.2. Voting Rights.** The Corporation shall have the following classes of membership, with the following voting rights:

**4.2.1 Class A.** Class A members shall be all Owners except Class B members (unless the Class B membership has been converted to Class A membership as provided in the following Section 4.2.2, in which event Declarant shall then be a Class A member). Until the Applicable Date, except for each matter which this Declaration expressly provides shall be approved by both classes of members of the Corporation, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Association. From and after the Applicable Date, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

**4.2.2 Class B.** Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. The Class B members shall have the right, without regard to the number of Lots then owned by the Declarant or the Class B Member, to propose or take any action on behalf of the Corporation without regard to the votes of the Class A Members and shall further have the right to exercise veto authority with regard to any and all actions taken by the Class A Members up to the Applicable Date and shall otherwise execute all voting rights with respect to any matter submitted to a vote of the members of the Corporation. The Class B membership shall cease and terminate as of the Applicable Date. Upon termination of Class B memberships, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Lot owned and for each individually identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

**4.2.3 Special.** Until the Applicable Date, there shall be three (3) additional Special members of the Corporation, being the persons from time to time appointed by Declarant to serve on the "Initial Board" pursuant to Section 5.2 hereof. Persons who are Special members shall not be deemed or considered members of the Corporation nor Owners of Lots for any purpose other than to qualify to act as members of the Initial Board. Special members shall have no voting rights on any matters submitted to a vote of the

members (unless such Special member is also a Class A member, in which event his voting rights shall be governed by Section 4.2.1).

**Section 4.3. Functions.** The Corporation has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas to serve any purpose described in the Articles of Incorporation filed for such corporation with the Secretary of State and to perform such other functions as may be designated for it to perform under this Declaration or under any recorded subdivision plat of the Real Estate, whether heretofore or hereafter recorded.

## ARTICLE X

### **Board of Directors**

**Section 5.1. Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 5.2 hereof.

**Section 5.2. Initial Board of Directors.** The initial Board of Directors shall be composed of persons designated or to be designated by Declarant (herein referred to as the "Initial Board"). Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the first meeting of the members of the Corporation occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

**Section 5.3. Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple

Owner, or a partner or an officer or trustee, shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

**Section 5.4. Term of Office and Vacancy.** Subject to the provisions of Section 5.5, the entire membership of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 5.2 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5.5. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

**Section 5.5. Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

**Section 5.6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of the Owners), and the collection and disbursement of the Common Expenses. The Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary.

**Section 5.7. Powers of the Board of Directors.** The Board Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- 5.7.1 to employ a Managing Agent to assist the Board in performing its duties;

5.7.2 to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

5.7.3 to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

5.7.4 to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas and to perform all other maintenance, upkeep, repair and replacement duties of the Corporation and the Board;

5.7.5 to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

5.7.6 to open and maintain a bank account or accounts in the name of the Corporation;

5.7.7 to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and

5.7.8 to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the Lots, Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more utility easements, landscape easements, maintenance easements, or Common Areas shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.

Section 5.8. Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

5.8.1 contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage,

5.8.2 proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

5.8.3 expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Section 5.9. Compensation and Expenses. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of the Owners.

Section 5.10. Non-Liability of Directors and Officers. The Directors and officers of the Corporation shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 5.11. Additional Indemnity of Directors and Officers. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or officer of the Corporation against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director or officer relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

ARTICLE VI

Management

Section 6.1. Duties of Managing Agent. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

6.1.1 protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of the Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

6.1.2 procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

6.1.3 landscaping and maintenance and upkeep of the Common Areas;

6.1.4 surfacing, paving and maintaining all streets and parking areas in the Common Area;

6.1.5 maintenance, repair and replacement of all signs, walls, pipes, lines, cables, conduits, pumps, gates, valves, grates, inlets, swales, equipment, structures, fixtures, and personal property of any type or description located in the Common Area;

6.1.6 assessment and collection from the Owners of the Owner's respective shares of the Common Expenses;

6.1.7 preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

6.1.8 preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with the delivery of the proposed annual budget for the current year;

6.1.9 keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;

6.1.10 procuring and maintaining for the benefit of the Corporation, the Owners, any Managing Agent and the Board the insurance coverage required under this Declaration and such other insurance coverages as the Board, at its sole discretion, may deem necessary or advisable;

6.1.11 paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and



6.1.12 all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the By-Laws, the Act, or any recorded subdivision plat of the Real Estate, whether heretofore or hereafter recorded.

Section 6.2. Compensation of Managing Agent. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense. Any Director may be reimbursed for expenses incurred on behalf of the Corporation upon approval of a majority of the other Directors.

Section 6.3. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 6.4. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date. Declarant may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

ARTICLE VII

Real Estate Taxes; Utilities

Section 7.1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Corporation and treated as a Common Expense.

Section 7.2. Utilities. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VIII

Maintenance, Repairs and Replacements

Section 8.1. By Owners. Each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance, repairs, decoration and replacement of his

own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 8.2. By the Corporation. Maintenance, repairs, replacements and upkeep of the Common Areas shall (except to the extent provided herein as the obligation of Owners) be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. In addition to the maintenance of the Common Areas, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

8.2.1 any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate; and

8.2.2 landscaping and other items installed by Declarant as part of its initial development of any Real Estate or by the Corporation in the right-of-way of any Street and in the "Landscape Buffers" or "Landscaping Easements" as shown on the Development Plan; and

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or any of his guests, tenants, contractors, subcontractors, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot with the knowledge and consent of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the

Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner, upon demand by the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purpose.

#### ARTICLE IX

##### Use, Restrictions and Architectural Control

Section 9.1. Architectural Committee. There shall be, and hereby is, created and established the "The Yorktown at Saratoga Architectural Committee" (the "Committee") to perform the functions provided to be performed by it hereunder or under any subdivision plat of the Real Estate. Until the end of the Development Period, the Declarant, or not more than three (3) persons designated by it, shall itself act as, and be and constitute the Committee. Following the end of the Development Period, the Committee shall be a standing committee of the Corporation consisting of three (3) or more Persons as may, from time to time, be provided in the By-Laws. If the By-Laws do not, at any time, provide for the Committee, then the Board shall be and constitute the Committee.

##### Section 9.2. Character of the Real Estate.

9.2.1 In General. Every Lot in the Real Estate, unless it is otherwise designated by the Declarant, is a residential lot and shall be used exclusively for residential purposes and for occupancy by a single family. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house and such outbuildings and other improvements, appurtenances and facilities as are usual and customary accessory uses to a single family dwelling house.

Prior to the commencement of any construction or demolition activity on a Lot, a delineation or staking of the foundation and ancillary hard surface areas, including, but not limited to, driveways, porches, walks, and decks shall occur. All trees outside the area so delineated or staked, and not within a margin of proximity thereof so as to make their removal reasonably necessary to accommodate the installation of the contemplated improvements within the delineated or staked area, shall be adequately protected from such construction or demolition activities and shall not be removed unless approved by the Committee.

Unpermitted removal or destruction of trees by an Owner or his successors in title, other than by acts of God or circumstances beyond the Owner's control, shall, within ninety (90) days after notice in writing from the Committee, be replaced by a tree of a type and size established by the Committee, and upon failure to do so, the Committee shall cause such tree to be replaced and the cost of such replacement shall be a lien upon the Lot collectable in any court of law or equity together with reasonable attorney's fees for the enforcement of such lien. For purposes of executing this covenant, an easement for ingress and egress shall be and hereby is reserved on each Lot for the performance thereof.

In addition to individual site plan restrictions and tree preservation administered by the Committee, platted building lines, minimum distances between buildings and minimum front, side and rear building lines shall be as established on any plat of the Real Estate. All construction upon the Real Estate shall be done in compliance with the requirements of all applicable zoning, building and other governmental laws, ordinances, codes and other regulations.

**Section 9.3. Restrictions and Obligations Concerning Size, Placement and Maintenance of Dwelling Units and Other Structures.**

9.3.1 **Building Size.** The ground floor area of the Dwelling Unit, exclusive of open porches, basements, and garages and other attached accessory buildings, shall be not less than 1500 square feet in the case of a one-story, nor less than 900 square feet in the case of a multiple story structure; provided, however, that no Dwelling Unit of more than one story shall have less than an aggregate of 1800 square feet of finished and livable floor area. Notwithstanding the foregoing, the minimum square footage of a Dwelling Unit constructed on Lots 21 through 35 shall be 1,800 square feet, excluding garages, porches, decks, carports, and basements.

9.3.2 **Building Height.** The maximum building height of the Dwelling Unit erected on a Lot shall not exceed 35 feet. The maximum building height of any accessory structure erected on a Lot shall not exceed 20 feet. The building height of the Dwelling Unit or accessory structure for purposes of the foregoing restriction shall be the vertical distance measured from the highest point of the proposed finished grade at the perimeter of the Dwelling Unit or accessory structure (as the case may be) to the highest point of the roof of the Dwelling Unit or accessory structure (as the case may be).

9.3.3 **Set Back Requirements.** Setback and yard size requirements for Lots shall be as set forth on any recorded plat of the Real Estate. No building shall be erected or maintained between the established setback lines and the Lot lines of said Lot. No building shall be erected closer to the side of any Lot than 6 feet (unless a greater setback line is established on any Plat). In the event a building is

erected on more than one Lot, this restriction shall apply to the sidelines of the extreme boundary of the multiple Lots.

9.3.4 Windows. On Lots 21 through 35, the Dwelling Unit shall have windows on each side of such Dwelling Unit, unless the Committee grants a special exception based on architectural features or landscaping along such side of the Dwelling Unit.

9.3.5 Exterior Construction. The colors of exterior building materials used on the buildings on a Lot may be limited by the Committee to a certain color range or palette. Loud or garish colors of brick, trim, siding or roofing are prohibited.

9.3.6 Garages and Accessory Structures. All Dwelling Units shall have any attached garage which will accommodate at least two (2) automobiles. No structure shall be erected, placed or permitted to remain upon any Lot, except a single-family residence and such structures and facilities (other than detached storage structures) as are usual and customary accessory structures to a single-family residence. No detached storage structure, minibarn, or other similar structure shall be erected or placed upon any Lot. No accessory structure shall be constructed or installed on any Lot except in accordance with plans therefore approved by the Committee as provided in this Declaration.

9.3.7 Driveways. All driveways must be hard-surfaced from their point of connection with the abutting street or road to their point of connection with the garage apron and shall be totally completed prior to occupancy of the Dwelling Unit.

9.3.8 Driveway Lighting. The Committee may, but is not required to, designate a standard driveway or coach light fixture for all Lots and may designate a standard location for such driveway or coach light fixtures. Each Owner of a Lot shall cause such standard driveway or coach light fixture to be installed and maintained at such Owner's expense. Driveway or coach light fixtures shall be on and illuminated from dusk to dawn, unless the Association shall provide otherwise by rule or regulation.

9.3.9 Address Identification. The numbers representing the address of each Dwelling Unit will be of uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

9.3.10 Mailboxes. Mailboxes and the posts on which they are mounted shall be of uniform size, height, design, and color as specified by the Declarant. Owners shall be prohibited from altering the appearance of their mailboxes or the posts on which they are mounted, except to make repairs to and maintain or replace the mailboxes or the posts on which they are mounted in a manner which is consistent with the uniform appearance as specified by the Declarant. Owners shall keep their mailboxes in a good state of repair at all times.

9.3.11 Swimming Pools. No aboveground swimming pools shall be permitted on any Lot.

9.3.12 Diligence in Construction. Every building whose construction or placement on any Lot is begun shall be completed within twelve (12) months after the beginning of such construction or placement. If the construction of any building and/or other improvements stops for more than thirty (30) days, the Owner of such Lot, upon written demand of the Board, shall remove from the Lot all construction materials, debris, trailers, equipment and construction related facilities, shall restore the Lot to an attractive condition and shall grade and seed the Lot in accordance with plans approved in writing by the Committee. If construction remains stopped for more than sixty (60) days and building on the Lot is not completely enclosed (i.e., roof, walls, windows and doors), the Owner of such Lot, upon written demand of the Board, shall demolish such building and shall grade and landscape the Lot in accordance with plans approved in writing by the Committee. No improvement which has been partially or totally destroyed by fire or otherwise allowed to remain in such state for more than forty-five (45) days from the time of such destruction or damage. If any building or other improvement located on a Lot is damaged or destroyed in whole or in part by fire or other casualty, the Owner of such Lot shall, within forty-five (45) days after the date of such damage or destruction: (a) commence repairs necessary to restore such buildings and improvements to their condition immediately prior to such damage or destruction or (b) commence demolition of such buildings and improvements. Upon commencement of such repairs or demolition, the Owner shall thereafter prosecute the same to completion diligently within the same time periods specified herein for original construction, and in the case of demolition, shall grade and landscape the Lot following such demolition in accordance with plans approved in writing by the Committee.

9.3.13 Occupancy of Partially Completed Dwelling Unit Prohibited. No Dwelling Unit constructed on any Lot shall be occupied or used for residential purposes until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee, and such decision shall be binding on all parties.

9.3.14 Prohibition of Used Structures. All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot, except that used brick or interior design features utilizing other than new materials may be used if specifically approved by the Committee.

9.3.15 Maintenance of Lots and Improvements. The Owner of a Lot shall at all times maintain the Lot and the exterior of any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly, and specifically, such Owner shall:

9.3.15.1 Mow and water the grass on the Lot and on any portion of the public right of way adjacent to the Lot (i.e. that portion of the public right of way between the curb and the Lot line) and provided fertilizer and weed control at such times as may be reasonably required in order to prevent the growth of weeds or other unsightly vegetation.

9.3.15.2 Remove all debris or rubbish from the Lot.

9.3.15.3 Prune or cut trees and shrubbery and cut down and remove dead or diseased trees from the Lot.

9.3.15.4 Keep the exterior of all improvements on the Lot in good repair and condition, including painting.

9.3.15.5 Prevent the existence of any other condition on the Lot that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate.

In addition, the Owner shall maintain trees planted in the public right of way adjacent to such Owner's Lot or in any Landscape Easements on such Owner's Lot and replace the same if they die or become diseased.

In the event an Owner of any Lot in the Real Estate shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Corporation, the Corporation shall have the right (but not the obligation), through its agents, employees, and contractors, to enter upon said Lot and to perform such obligations, including, without limitation, to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon at the Owners' expense. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

Neither the Declarant nor the Corporation, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

9.3.16 Fences. The Committee, prior to any installation, must approve any fencing, walls, mounds, and landscape screening and any such fencing, walls, mounds, and landscape screening shall be installed as specifically approved by the Committee. The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been issued by the Committee in writing within thirty (30) days after submission, then said request shall be considered DENIED. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. No fences shall

be installed on a lot abutting Saratoga Parkway. Notwithstanding any other provision of this Declaration to the contrary, no fencing of any type shall be permitted in any area designated on the Plat as a drainage easement, sewer easements, or utility easement, nor shall any fence be permitted to encroach upon any such easement. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Committee when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or a Builder. All fences shall be kept in good repair by the Owner. No fence shall be installed in the front of the front corner of the Dwelling Unit that is furthest back from the street. Notwithstanding any other provision of this Declaration to the contrary, invisible electronic fences designed to restrict the movement of animals are expressly permitted. No fences are allowed in easements and, if erected, are erected at the Owner's risk as such fences may be partially or completely torn down by others if said fences interfere with the installation, operation, and/or maintenance of the facilities for which the easement has been reserved.

9.3.17. Other Restrictions. Each Owner also acknowledges that the Real Estate and the development thereof is also subject to those Commitments and Development Standards given in favor of the Town of Plainfield in accordance with Ind. Code § 36-7-4-613 and Ind. Code § 36-7-4-615 [recorded in the Office of the Recorder of Hendricks County on May 2, 2003, at Deed Record 419, Pages 2658-2664, as Instrument No. 200300018258, which Commitments and Development Standards shall expressly be in addition to any of the terms, provisions, covenants, conditions and restrictions set forth in this Declaration .

Section 9.4. Provisions Respecting Disposal of Sanitary Waste.

9.4.1 Nuisances. No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

9.4.2 Construction of Sanitary Sewage Lines and Disposal Facilities. All sanitary sewage lines and disposal facilities on the Lots shall be designed, constructed, installed and maintained in accordance with the provisions and requirements of the Town of Plainfield and any other governmental or quasi-governmental agencies having jurisdiction over sanitary sewers and these Restrictions.

Section 9.5. General Prohibitions. In addition to any restrictions or limitations contained elsewhere in this Declaration or in any recorded plat of the Real Estate, the following limitations, restrictions and prohibitions shall govern the development, use and occupancy of the Real Estate:

9.5.1 In General. No noxious or offensive activities shall be carried on any Lot, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to



any Owner of another Lot. Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons. Any violation of this paragraph constitutes a nuisance which may be abated by the Corporation in any manner provided at law or in equity. The cost or expense of such abatement, including court costs and attorneys' fees, shall constitute a Special Assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Corporation nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed hereunder.

9.5.2 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant, or as approved by the Committee, no metal, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Real Estate.

9.5.3 Signs. Only those professionally constructed signs which advertise a Dwelling Unit on a Lot for sale by a licensed and registered real estate broker/company, and which are non-illuminated and less than or equal to 6 square feet in size, shall be permitted ("Permitted Signs"). With the exception of Permitted Signs, all signs including, but not limited to, those advertising a garage sale or a Lot "For Lease", must be approved by the Committee before being placed upon any Lot or Common Area or displayed from a Dwelling Unit. No more than one Permitted Sign may be displayed on a Lot or from a Dwelling Unit at one time. In addition, no more than one Permitted Sign may be displayed in the Community by a Person owning multiple Lots. All Permitted Signs advertising a Lot for sale shall be removed within three (3) business days of the conveyance of the Lot. Notwithstanding any other provision of this Declaration to the contrary, signs advertising a Lot for "Rent to Own", or something similar, are prohibited and may not be placed on any Lot or displayed from a Dwelling Unit constructed thereon. Notwithstanding any other provision of this Declaration to the contrary, the Declarant is expressly exempt

from the requirements of this Section 9.5.3 and may also post signs on Common Areas and Lots owned by Declarant as it deems necessary.

9.5.4 Decorative Structures. No decorative structures, statutes, or ornaments shall be permitted on any Lot, except in the rear yard (defined as the area of yard, exclusive of easement, located to the rear of the Lot Owner's Dwelling Unit). Any such decorative structure, statute, or ornament shall not exceed five feet (5') in height. This section shall not preclude owners from decorating their Lots or Dwelling Units during appropriate holiday seasons in a manner that is not offensive or disruptive to the other Owners as may be determined by the Board in its sole discretion.

9.5.5 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Real Estate, on any Lot, or in any Dwelling Unit, except that no more than a total of three (3) dogs, cats, or other normal household pets may be kept in Dwelling Units subject to rules and regulations adopted by the Corporation through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose and are confined within the boundaries of their Owner's Lot, unless restrained by a leash or attended by their Owner. No outdoor kennels, doghouses, or other structures designed or used as a shelter for any such pets shall be permitted on any Lot. In every case, such animals shall also be kept in a manner that does not constitute an annoyance to the Owners of other Lots and does not adversely affect their use and enjoyment of their property. Excessive barking of dog(s) or vicious animals shall constitute a nuisance and may be ordered removed from the Real Estate by the Corporation. All animals shall be leashed by the Owner when the animal is within any Common Area or otherwise located off of the Owner's Lot. Owners are responsible for the cleanup of any animal fecal matter or other droppings ("Animal Matter") deposited by their animals in any Common Area or other Owner's Lot and the failure to remove any Animal Matter from any Common Area or other Owner's Lot shall subject the Owner to a fine not to exceed \$50.00 per occurrence as determined by the Board.

9.5.6 Vehicle Parking. No trucks one (1) ton or larger in size, motor homes, campers, trailers, recreational vehicles, boats, boat trailers, snowmobiles, jet ski or similar vehicles shall be parked or stored on any street or on any Lot, unless the same are parked in a garage with the door closed. There shall be no outside storage of commercial trucks, trailers, boats, junk cars, or fuel tanks. In operable vehicles shall not be allowed to remain on any Lot or street, except only to the extent necessary to enable movement to a proper repair facility. No heavy equipment, tractors, commercial vehicles, semi-trucks, or other similar vehicles or equipment shall be permitted to be kept on any Lot, Common Area, street, easement or right-of-way, unless entirely kept in a closed garage. A pick-up truck greater than one-half ton or a full-size van with business or commercial logos or markings shall constitute commercial vehicles under these covenants.

To the extent permitted by applicable law and ordinances, parking is prohibited at all times within the cul-de-sac loops of any street within or upon the Real Estate, and overnight parking is prohibited on all streets.

9.5.7 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage with the door closed.

9.5.8 Garbage, Trash and Other Refuse. Trash and refuse disposal will be on an individual basis, Lot by Lot. The community shall not contain dumpsters or other forms of general or common trash accumulation except to facilitate development and house construction. No Lot shall be used or maintained as a dumping ground for trash, nor shall any accumulation of refuse or trash, including compost, be permitted on any Lot. Rubbish, garbage and other waste shall be kept in sanitary containers of a type, kind and capacity to be determined by the Declarant. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view and shall be maintained so as to be environmentally acceptable. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot or Common Area. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse on any Lot or Common Area.

9.5.9 Laundry. No clotheslines may be erected on any Lot and no clothes, sheets, blankets, rugs, laundry or other things shall be otherwise hung out or exposed.

9.5.10 On-Site Fuel Storage. External or buried propane or gas tanks shall not be permitted. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate except that portable tanks (less than five (5) gallons) appurtenant to gas grills and up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Corporation shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

9.5.11 Outside Storage. Except for construction materials and equipment used by the builder during the construction of a Dwelling Unit on the Lot, all construction materials and equipment, lawn equipment and similar items shall be stored at all times when not in use in enclosed storage areas.

9.5.12 Recreational Improvements. No recreational equipment, goals, or improvement of any kind, including, but not limited to basketball goals (whether temporary or permanent), tennis courts, soccer goals, volleyball or badminton nets shall be placed or maintained within the right-of-way of any street. In addition, all such recreational equipment, goals or improvements must be located to the rear of the front foundation line of the Dwelling Unit; provided, however that a translucent basketball goal mounted on a black support may be allowed adjacent to a driveway in the front or side yard. Unless the Committee establishes a policy establishing other specifications, backboards of all basketball goals shall be of a

translucent material such as fiberglass or Lexan and attached to a black pole or similar type of post. The location of all such recreational equipment, goals or improvements on the Lot is subject to approval of the Committee if it would be visible from a public right-of-way adjoining the Lot. No basketball goal or backboard shall be permitted to hang from or be affixed to the Dwelling Unit or garage. Lighted courts of any kind are prohibited. Temporary or portable basketball courts will not be permitted.

9.5.13 Antennas and Receivers. No television, radio or other antennas, nor any obtrusive object may be erected by any Owner on the exterior of a Dwelling Unit or on a Lot. Satellite dishes of eighteen (18) inches in diameter or smaller may be permitted following review and approval of the installation location by the Committee, but in no event will the installation location be permitted to be higher than the roof ridge. Whenever possible, satellite dishes should not be visible from a public way or from any other Lot. No outside speakers of any kind may be installed or permitted on any Lot.

9.5.14 Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

9.5.15 Electric Bug Killers. No electric bug killers, "zappers" and other similar devices shall be permitted.

9.5.16 Flag Poles. Flag poles shall not exceed twenty feet (20') in height.

9.5.17 HVAC Units. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Dwelling Unit or garage) provided, however, that this Restriction shall not apply to central air conditioning units. No heat pumps, air conditioning units or gas meters will be installed forward of the front plane of any Dwelling Unit. If any heat pump, air conditioning unit, gas meter shall otherwise be visible from any public street, it shall be screened by fencing or landscaping.

9.5.18 Model Homes. No Owner of any Lot (except Declarant) shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

9.5.19 Temporary Structures. No temporary house, trailer, tent, garage, storage shed or container (including Portable on Demand Storage), or other outbuilding shall, without express authority from Declarant, be placed or erected on any Lot or on any street, nor shall any overnight camping be permitted on any Lot.

9.5.20 Drains and Sump Pump Discharges. No house footing drain or roof water drain shall be discharged into the sanitary sewers. Subsurface drains have been provided in certain areas within Drainage Easements as additional storm and ground water drainage sources and are part of the public storm drainage

system. Subsurface drain laterals have been provided on specific Lots, and the Owners of such Lots shall cause all sump pump discharge lines to be connected to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Owner in accordance with the following:

9.5.20.1 The limits of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the Dwelling Unit and the connection with the publicly maintained storm sewer or subsurface drain within the Drainage Easement.

9.5.20.2 In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.

9.5.20.3 Any Owner or builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Corporation will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) for immediate payment. If immediate payment is not received, the Declarant and/or the Corporation shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter Sections 12.5 and 12.6 of this Declaration.

9.5.21 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. Any field tile or underground drain which is on any Lot must be allowed to perpetuate. To the extent not maintained by the Drainage Board, drainage swales shall be maintained by the Owner of the Lot upon which such swales are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Real Estate may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Real Estate will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Pond included in such legal drain, which assessment will be a lien against the Lot. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof. It shall be the duty of every Owner of every Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this paragraph. Notwithstanding any other provision of this Declaration to the contrary, no fencing or landscaping of any type shall be permitted in any area

designated on the Plat as a Drainage Easement, nor shall any fence or landscaping be permitted to encroach upon any such Drainage Easement

9.5.22 Wells and Septic Tanks. No water wells shall be drilled on any of the Lots, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots.

9.5.23 Lot Access. All Lots shall be accessed from the interior street areas of the subdivision. No lot access is permitted from Saratoga Parkway.

9.5.24 ATV/Dirt Bikes. ATV's, dirt bikes, four wheeler's, go-carts, or other similar recreational vehicles shall not be permitted upon any Common Area or any other area dedicated as a common area by a plat within the Saratoga PUD real estate. This prohibited use shall also extend to areas defined as utility or drainage easements by any plat within the Saratoga PUD area.

9.5.25 Business Use. No trade or business may be conducted in or from any Lot, except that an Owner or occupant resident on a Lot may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) no sign or display is erected that would indicate from the exterior that the Dwelling Unit is being utilized in part for any purpose other than that of a residence; (c) no commodity is sold upon the premises; (d) no person is employed other than a member of the immediate family residing in the Dwelling Unit; (e) no manufacture or assembly operations are conducted; (f) the business activity conforms to all zoning requirements for the Real Estate; (g) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Real Estate; and (h) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This Section shall not apply to any activity conducted by the Declarant or its affiliates or a builder approved by the Declarant with respect to its development and sale of the Real Estate, or any part thereof, including Lots or its use of any Lots which such entity owns with the Real Estate.

9.5.26 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street liens extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street lien with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front setback line and the street curb.

9.5.27 Use of Facilities. All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas.

9.5.28 Landscaping of Common Areas. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Board.

9.5.29 Play Equipment. Children's play equipment such as sandboxes, swing and slide sets, and trampolines shall not require approval by the Committee, provided that

9.5.30.1 such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair and

9.5.30.2 such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the Dwelling Unit into the rear yard of the Lot.

Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee. All play or sports equipment, swings, or other play facilities are permitted only in the rear yard, other than a basketball backboard, installed in accordance with Section 9.5.12 hereof, may be allowed along a driveway in the front yard or side yard. Exterior lighting of play or sports equipment/facilities is not permitted. No play or sports equipment may be placed at any time in the sidewalk area or street right of way.

9.5.31 Solar Panels. No solar panels shall be permitted on any Lot.

9.5.32 Declarant's Use. Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain any Lots and

Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, or for the construction and maintenance of Common Areas, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

9.5.33 Nonapplicability to Corporation. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth herein shall not apply to or be binding upon the Corporation in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Corporation in the performance of its duties, obligations and responsibilities as to the Common Areas.

Section 9.6. Committee's Functions.

9.6.1 Statement of Purposes and Powers. The Committee shall regulate the exterior design, appearance, use, location and maintenance of lands subject to these Restrictions, and residences, buildings, structures or other improvements thereon and the installation and removal of fences, walls, and landscaping on any Lot in such a manner as to preserve and enhance values, to maintain a harmonious relationship among structures and the natural vegetation and topography, and to provide for the proper functioning of the storm drainage system for the Real Estate. For these purposes, the Committee may, from time to time and at any time, make, amend and modify such rules, regulations and guidelines as it may deem necessary or desirable to guide Owners as to the terms, conditions, procedures and requirements of the Committee for the submission and approval of items to it. Such rules, regulations and guidelines may, in addition, set forth additional specifications to those set forth herein or in any subdivision plat of the Real Estate, so long as the same are not inconsistent with this Declaration or any such subdivision plat and such rules, regulations, and guidelines shall be binding on all Owners of any Lot.

9.6.2 Committee. Until the Applicable Date, the Committee shall be composed of at least three (3) members who shall be appointed, from time to time, by the Declarant. Such members shall be subject to removal by the Declarant at any time, with or without cause. Any vacancies from time to time shall be



filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Corporation the power to appoint and remove one or more members of the Committee. After the Applicable Date, the Committee shall be a standing committee of the Corporation, consisting of three (3) persons appointed, from time to time, by the Board.

9.6.3 Duties of Committee. The Committee shall approve or disapprove proposed improvements within twenty (20) days after all required information shall have been submitted to it. If, however, approval has not been issued in writing within thirty (30) days after submission to the Committee, then said request shall be deemed to be DENIED.

9.6.4 Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

9.6.5 Lot Improvements. No dwelling, building structure, fence, deck, driveway, swimming pool, rear yard tennis or basketball courts, or improvement of any type or kind (including significant landscaping) shall be erected, constructed, placed, modified, or altered on any Lot, and no clearing, excavation, grading or other site work shall take place on any Lot until plans therefore have been approved in writing by the Committee. Such approval shall include approval of the exterior design and exterior colors and materials. No change shall be made in the exterior colors or materials of any improvement located on any Lot without the prior written approval of the Committee, unless such colors are specifically set forth on the approved list of colors published from time to time by the Committee. Approval of fences or walls may be conditioned upon installation of additional landscaping in order to screen such fence or wall from the view of adjoining property and the set back of such fence or wall from the Lot line. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include site plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-

way, (iii) exterior elevations of all Improvements proposed to be constructed upon such Lot, (iv) a finish schedule for all exterior surfaces to be constructed (with samples), (v) with respect to the initial construction on the Lot, a grading and drainage plan for the Lot, (vi) a landscape plan, and, if applicable, a tree removal plan showing existing trees which will be required to be removed in connection with the proposed construction, together with any other materials, photographs, or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn by a professional to a scale of 1" = 30', or to such other scale as the Committee shall deem appropriate. The following drawings shall be considered minimum for approval study:

9.6.5.1 Site plan which includes complete topographic study, location of all trees, existing and proposed structures, drives, proposed (or existing) sanitary sewage disposal system location, and other utility service; and

9.6.5.2 Foundation plan, floor plans, cross-sections, exterior elevations, electrical drawings, and complete specifications for all materials to be used outside the house, building, structure or other improvement.

It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent homeowner or in a Common Area. If Owner has encroached on an adjacent Owner's property or in a common area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing Applications for approval. Notwithstanding any other provision of this Declaration to the contrary, no fencing of any type shall be permitted in any area designated on the Plat as a Drainage Easement, nor shall any fence be permitted to encroach upon any such Drainage Easement.

9.6.6 Common Areas, Entrances, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area or Landscape Easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

9.6.7 Approvals. Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Corporation,

by the President or a Vice President thereof, and with respect to the Committee, by one (1) member thereof.

9.6.8 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

9.6.8.1 The plans, specifications, drawings or other material submitted are themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions or any rules, regulations or guidelines adopted by the Committee;

9.6.8.2 The design (including the roof pitch) of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee

9.6.8.3 The color scheme or exterior finishes of a proposed improvement are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee;

9.6.8.4 The grading and drainage plan is not, in the sole opinion of the Committee, compatible with the general storm water drainage plan for the Real Estate;

9.6.8.5 The landscaping is not, in the sole opinion of the Committee, appropriate or sufficient;

9.6.8.6 The proposed construction, modification, or alteration of the proposed tree removal would, in the sole opinion of the Committee, be contrary to the interests of any other Owner or inconsistent with the preservation and enhancement of the value of the Real Estate; or

9.6.8.7 The proposed improvement or any part thereof, would in the sole opinion of the Committee, be contrary to the interests, welfare, or rights of all or any of the other Owners.

9.6.9 Power to Grant Variances. The Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but such variance or adjustment shall be granted in conformity with the general intent and purposes of the Declaration and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development.

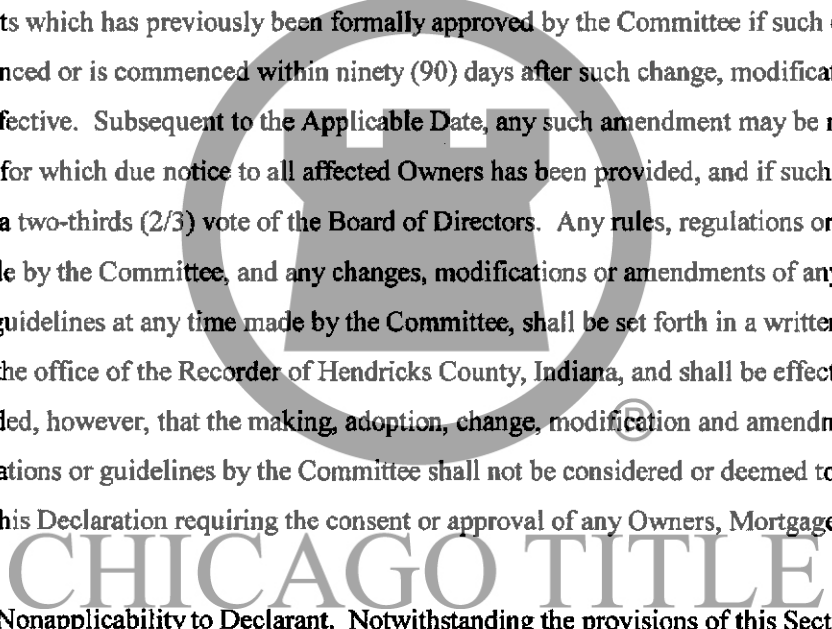
9.6.10 Liability of Committee, Declarant, Corporation. Neither the Committee nor any agent thereof, nor the Declarant, or Corporation shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Corporation or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Corporation and/or Declarant make no representation or warranty as to the

suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each lot prior to proposing construction.

9.6.11 Inspection. The Committee and the Declarant may inspect work being performed to assure compliance with these Restrictions, the restrictions contained in any plat of the Real Estate and applicable regulations. However, neither the Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

9.6.12 Change, Modification or Amendment of Rules, Regulations and Guidelines. Any rules, regulations and guidelines at any time made by the Committee may be changed, modified and amended by the Committee at any time, and from time to time, on a prospective basis, to the extent not inconsistent with this Declaration; provided, however, that no such change, modification or amendment shall be applied by the Committee retroactively as to any construction theretofore completed nor as to the construction of any improvements which has previously been formally approved by the Committee if such construction has been commenced or is commenced within ninety (90) days after such change, modification or amendment is effective. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. Any rules, regulations or guidelines adopted and made by the Committee, and any changes, modifications or amendments of any such rules, regulations and guidelines at any time made by the Committee, shall be set forth in a written instrument and recorded in the office of the Recorder of Hendricks County, Indiana, and shall be effective upon such recording; provided, however, that the making, adoption, change, modification and amendment of any such rules, regulations or guidelines by the Committee shall not be considered or deemed to be amendments of this Declaration requiring the consent or approval of any Owners, Mortgagees or other Persons.

9.6.13 Nonapplicability to Declarant. Notwithstanding the provisions of this Section 9.6 or any other provision of this Declaration requiring approval of the Committee, in no event shall the Declarant or any entity related to Declarant be required to apply for or secure the approval of the Committee in connection with any construction, modification, or alteration on the Real Estate by Declarant or any entity related to Declarant.



ARTICLE X

**Reserved Easements**

**Section 10.1. Easements.**

10.1.1 **Plat Easements.** In addition to such easements as are created elsewhere in this Declaration or in a Supplemental Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hendricks County, Indiana, Lots are subject to drainage easements, utility easements, sewer easements, pathway easements, thoroughfare easements, landscape easements, tree preservation easements, and common area access easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, the Committee, public utility companies and governmental agencies as follows:

10.1.1.1 **Drainage Easements (DE)** are hereby created, granted, and reserved for the benefit of, and granted to, the Drainage Board to enter upon the Real Estate and all Lots therein, to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System, and for the nonexclusive use and benefit of the Declarant, the Association (as such term is defined in the Master Declaration), the Corporation, and the Owners for access to and installation, repair, removal, or replacement of Drainage Facilities (as such term is defined in the Master Declaration) and are intended to provide paths and courses for the area and local storm drainage, either overland or in adequate underground conduit to serve the needs of the Community and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain drainage across his own Lot and such Owner shall keep the portion of said Drainage Easement on his Lot free from obstructions (including providing for the installation of culverts as may be necessary to accomplish such purpose) so that the surface water drainage will be unimpeded. Notwithstanding any other provision of this Declaration to the contrary, except as installed by the Declarant, the Association (as such term is defined in the Master Declaration) or with the prior written approval of the Committee and except for any entry sign or identification structure installed by the Corporation, no structures, fencing or landscaping of any type shall be permitted in any area designated on the Plat as a Drainage Easement, nor shall any structure, fence or landscaping be permitted to encroach upon any such Drainage Easement. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Corporation, but neither Declarant nor the Corporation shall have any duty to undertake any such construction or reconstruction.

10.1.1.2 **Utility Easements (UE)** are created, granted, and reserved for the use of Declarant, the Corporation and all public or municipal utility companies, including, without limitation, any local governmental agency or public utility company having jurisdiction over any sanitary waste disposal system and potable water distribution system, as well as similar entities supplying electricity, telecommunications, and gas, but specifically excluding transportation companies, for the installation and maintenance of lift stations, booster stations, mains, hydrants, ducts, poles, lines and wires and all other utility facilities.

10.1.1.3 **Sewer Easements (SE)** are created, granted, and reserved for the use of Declarant, the Corporation, and all public or municipal providers of sanitary waste disposal systems, for the installation and maintenance of lift stations, mains, and other utility facilities.

10.1.1.4 Pathway Easements (PE) are created, granted, and reserved for the nonexclusive use of Declarant, the Corporation, and the public to provide for safe and efficient passage of pedestrians adjacent to public right-of-ways. Pathway easements are also created, granted, and reserved for the nonexclusive use of Declarant and the Corporation for the installation, maintenance and repair of Paths (as such term is defined in the Master Declaration), trees, shrubbery, other plantings and Landscape Improvements (as such term is defined in the Master Declaration). Except as installed by the Declarant, the Association (as such term is defined in the Master Declaration), or the Corporation, and except for utility facilities or Drainage Facilities (as such term is defined in the Master Declaration) installed in any Utility or Drainage Easement that may now or hereafter be declared, created, granted or reserved in or upon any portion of the Real Estate designated as a Pathway Easement, no structures or other improvements shall be installed or maintained in or upon the Pathway Easements. Notwithstanding the foregoing provisions of this Section 10.1.1.4 and the provisions of any Plat or other recorded instrument executed by Declarant designating a Pathway Easement, a Pathway Easement shall automatically terminate as to that portion of such easement area that is located within or upon any public right-of-way hereafter dedicated to the public upon the recording of a Plat or other instrument creating such public right-of-way or within or upon any driveway or roadway providing access to a Lot from a public right-of-way for which a curb cut has been issued by a governmental authority having jurisdiction of such public right-of-way; provided, however that the easement created herein for the use of the public to provide safe and efficient passage of pedestrians shall survive and be unaffected by the issuance of such curb cut authorization.

10.1.1.5 Thoroughfare Easements (TE) are created, granted and reserved for the nonexclusive use of Declarant and the Corporation for the purpose installing, maintaining and removing trees, shrubbery, flowers and other plantings, Entryway Appurtenances (as such term is defined in the Master Declaration) and Landscape Improvements (as such term is defined in the Master Declaration). Declarant further reserves unto itself and grants to the Corporation the right and easement to install and maintain (including any rights of access as may be necessary for such installation and maintenance) within and upon a Thoroughfare Easement an entry sign or structure identifying the Community; provided, however, that the design, appearance and location of any such entry sign or structure shall be subject to the prior written approval of the Committee; and further provided that any such entry sign or structure shall be maintained by the Corporation for the Community in a slightly condition and in good repair at the sole cost and expense of the Corporation, it being expressly understood and agreed that neither the Declarant, nor the Association (as such term is defined in the Master Declaration), nor the Town of Plainfield, Indiana, shall have any responsibility for maintaining and repairing such entry sign or identification structure. Except as installed by the Declarant, the Association (as such term is defined in the Master Declaration) or the Corporation (including improvements installed by the Declarant or the Association in that portion of a Thoroughfare Easement also designated as a Pathway Easement) and except for any utility facilities or Drainage Facilities (as such term is defined in the Master Declaration) installed in any Utility or Drainage Easement that may now or hereafter be declared, created, granted or reserved in and upon any portion of the Real Estate designated as a Thoroughfare Easement, no structures or other improvements shall be installed or maintained in or upon the Thoroughfare Easements. Notwithstanding the foregoing provisions of this Section 10.1.1.5 and the provisions of any Plat or other recorded instrument executed by Declarant designating a Thoroughfare Easement, a Thoroughfare Easement shall automatically terminate as to that portion of such easement area that is located within or upon any public right-of-way hereafter dedicated to the public upon the recording of any Plat or other instrument creating such public right-of-way or within or upon any driveway or roadway providing access to a Lot from a public right-of-way for which a curb cut permit has been issued by the governmental authority having jurisdiction of such public right-of-way.

10.1.1.6 Entry Way Easements (EWE) are created, granted, and reserved for the nonexclusive use by Declarant, the Committee and the Corporation for the installation, operation and maintenance of the Entry Ways.

10.1.1.7 Landscape Easements (LE) are created, granted, and reserved for the nonexclusive use by Declarant, the Committee and the Corporation for the planting and maintenance of trees, shrubs and other plantings. No Landscape Easement shown on the Plat may be modified at any time by any person other than Declarant. Except for underground utility facilities, no permanent improvements shall be made to or installed in any Landscape Easement other than lighting, seating, walkways, planting structures and fountains or other non-recreational water features. Specifically, no structures, play equipment, tree houses, or improvements of any kind, or fences shall be erected or maintained upon said Landscape Easements. Each Owner of a Lot subject to the Landscape Easement shall mow, water and otherwise maintain the area within such Landscape Easement on such Owner's Lot in good condition and shall at all times keep same free from little and the growth of weeds or other unsightly vegetation.

10.1.1.8 Tree Preservation Easements (TPE) are created, granted, and reserved for the nonexclusive use of Declarant and the Corporation for the continued preservation, planting, or replacement of trees. Any Owner whose Lot includes such easement shall maintain the trees so located within the Tree Preservation Easement and replace any diseased or dead trees. An Owner may not otherwise remove any tree or shrub material existing within the Tree Preservation Easement. Except for underground utility facilities, no permanent improvements shall be made to or installed in any Tree Preservation Easement other than lighting, seating, walkways, planting structures and fountains or other non-recreational water features. Specifically, no structures, play equipment, tree houses, or improvements of any kind, or fences shall be erected or maintained upon said Tree Preservation Easements. Each Owner of a Lot subject to the Tree Preservation Easement shall mow, water and otherwise maintain the area within such Tree Preservation Easement on such Owner's Lot in good condition and shall at all times keep same free from little and the growth of weeds or other unsightly vegetation. This covenant, including all Restrictions of this Section 10.1.1.5, shall be specifically enforceable by Declarant, the Corporation, and the Saratoga Woodlands Homeowners Association, Inc.

10.1.1.9 Common Area Access Easements (CAE) are created, granted, and reserved for the nonexclusive use of Declarant and the Corporation for the purpose of gaining access to the Common Areas in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Common Area to enjoy the use thereof to the extent authorized herein.

10.1.1.10 Sidewalk Easements (SE) are created, granted and reserved for the nonexclusive use by the Town of Plainfield, Indiana for access to and maintenance and repair of any sidewalks installed by the Owners within and upon the Sidewalk Easements and for the use of such sidewalks by the public. Except as installed by Declarant, the Association (as defined in the Master Declaration) or with the prior written approval of the Committee and except for any entry sign or identification structure installed by the Corporation, no structures, or fences shall be erected or maintained upon such Sidewalk Easements.

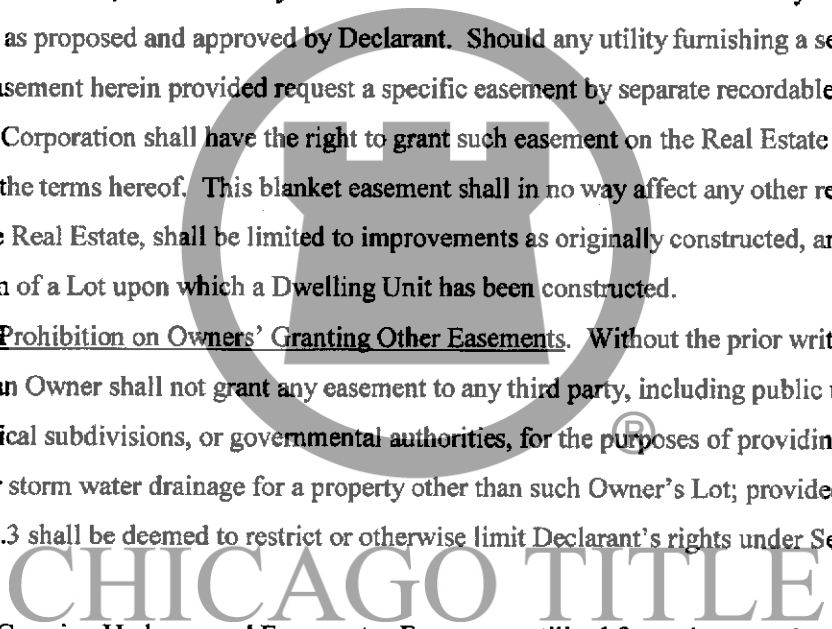
All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to

a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hendricks County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (an replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

10.1.2 Declarant's Reserved Rights. Notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby reserves the nonexclusive right, privilege, and a blanket easement in, on, over, across, through and under the entirety of the Real Estate for ingress, egress, installation, replacement, relocation, repair and maintenance of underground utility and service lines, facilities and systems, including but not limited to water, sewer, gas telephones, electricity, television, cable or communication lines and systems, and drainage lines, and to otherwise tie into and/or otherwise connect to and use (without a tap-on or any other fee for so doing). By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Real Estate and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated except as proposed and approved by Declarant. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Real Estate without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Real Estate, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Dwelling Unit has been constructed.

10.1.3 Prohibition on Owners' Granting Other Easements. Without the prior written approval of the Committee, an Owner shall not grant any easement to any third party, including public utility companies, political subdivisions, or governmental authorities, for the purposes of providing water, sanitary sewer or storm water drainage for a property other than such Owner's Lot; provided nothing in this Section 10.1.3 shall be deemed to restrict or otherwise limit Declarant's rights under Section 10.1.2 of this Declaration.

10.1.4 Crossing Underground Easements. Easements utilized for underground service may be crossed by streets, driveways, walkways, Pathway Easements and Thoroughfare Easements, provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other paving, other than crossings, streets, driveways, walkways, Pathway Easements and Thoroughfare





Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

10.1.5 Declarant's Easement to Correct Drainage. Declarant further reserves a blanket easement and right on, over and under the Real Estate to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary.

10.1.6 Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the Drainage Easement (DE) on such Owner's Lot.

ARTICLE XI

Additional Provisions Respecting Sanitary Sewer Utility

Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies the right of ingress/egress. No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways is at risk of being removed, damaged, or destroyed by the applicable utilities without the obligation of replacement. No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways is at risk of being removed by the applicable utilities without the obligation of replacement. All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the Dwelling Unit to its connection to the sanitary sewer main. The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains to the sanitary sewers is prohibited. Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

ARTICLE XII

Assessments and Budget

Section 12.1. Creation of Assessments. There are hereby created assessments for Corporation expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 12.7. There shall be three (2) types of assessments: (a) Regular Assessments to fund Common Expenses for the benefit of all Members of the Corporation; and (b) Special Assessments as described in Section 12.5 below. Declarant, for each Lot now or hereafter owned

by it, hereby covenants, and each Owner of a Lot by acceptance of a deed or recorded contract of sale therefore, whether or not it shall be so expressed in such deed contract of sale, is deemed to covenant and agree to pay these assessments.

Section 12.2. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 12.3. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Corporation at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hendricks County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the

meeting of the Corporation at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, Regular based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 12.4. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final budget, including reserve funds as herein above provided. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

12.4.1 if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion or such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

12.4.2 if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner

on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 13.2 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Section 12.5. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on a given Lot, and, in the case of multiple Lots, such Assessment shall be prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

Section 12.6. Failure of Owner to Pay Assessments.

12.6.1 No Owner may exempt himself from paying Regular Assessments or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common

Declaration of Covenants, Conditions and  
Restrictions for Yorktown at Saratoga  
Page 45 of 56

Areas and items deemed Common Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Corporation, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly quoted or published by First<sup>®</sup> Indiana Bank, of Indianapolis, Indiana (or if said Bank is no longer in existence, then such rate charged by another national bank in Hendricks County, Indiana selected by the Board).

12.6.2 Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment

of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectable from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

Section 12.7. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date, the annual budget and all Regular Assessments or Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to an Owner other than Declarant, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Corporation against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

Section 12.8. Initial Working Capital and Start-Up Fund. Upon the closing of the initial conveyance of each Lot by Declarant to another Person, the purchaser of such Lot shall pay to the Corporation, in addition to any other amounts then owed or due to the Corporation, as a contribution to its working capital and start-up fund, an amount equal to one-sixth (1/6th) of the then current annual Regular Assessment against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed the Corporation with respect to such Lot. Such working capital and start-up fund shall be held and used by the Corporation for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Corporation for its early period of operation of the Real Estate, to enable the Corporation to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

ARTICLE XIII

**Mortgages**

**Section 13.1. Notice to Corporation.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

**Section 13.2. Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 12.4 hereof.

**Section 13.3. Condemnation and Insurance Awards.** No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

**Section 13.4. Right of First Refusal.** The Corporation DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Corporation through amendment of the Declaration, Corporation Articles, Corporation By-Laws or any

other document governing the development and administration of the Real Estate must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in any Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate must not impair the rights of a first mortgagee to:

13.4.1 Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;

13.4.2 Accept a deed assignment in lieu of foreclosure in the event of default by a mortgagor; or

13.4.3 Sell or lease a unit acquired by default by the mortgagee.

#### ARTICLE XIV

##### Insurance

**Section 14.1. Casualty Insurance.** The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Corporation as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby). All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.



Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 14.2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 14.3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 14.4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the

obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice (accompanied by copies of such policies or any changes thereto, or certificates indicating the coverages included therein) shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation, to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 14.5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

#### ARTICLE XV

#### Casualty and Restoration

Section 15. In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares.

Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary. Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

ARTICLE XVI

Amendment

Section 16.1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

16.1.1 Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

16.1.2 Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owner having in the aggregate at least a majority of the votes of all Owners.

16.1.3 Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

16.1.4 Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners and, prior to the Applicable Date, must also receive the express written consent of Declarant. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

16.1.5 Special Amendments. No amendments to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of

determining the same, or (2) the provisions of Section 14.1 of this Declaration with respect to casualty insurance to be maintained by the corporation, or (3) the provisions of Section 15.1 of this Declaration with respect to reconstruction or repairs of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

16.1.6 Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Hendricks County, Indiana, and such amendment shall not become effective until so recorded.

Section 16.2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, or (f) to implement the rights and options of Declarant (or its nominee). In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 16.2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any

such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 16.3 shall terminate at such time as the Applicable Date.

ARTICLE XVII

**Acceptance and Ratification**

Section 17. All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVIII

**Negligence**

Section 18. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

ARTICLE XIX

**Benefit and Enforcement**

Section 19. This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Hendricks County, Indiana and expiring December 31, 2025, after which time they shall be automatically extended for successive periods of ten (10) years each, unless by vote of a majority of the then Owners of the Lots it



is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same. The failure or delay at any time of Declarant, the Corporation, the Owners, the Committee, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XX

Miscellaneous

Section 20.1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 20.2. HUD Amendment Approval. All other provisions of the Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate notwithstanding, so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Urban Housing and Urban Development:

20.2.1 Annexation of additional properties other than the Additional Real Estate;

20.2.2 Dedication of Common Area; and

20.2.3 Amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 20.3. Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 20.4. Condemnation, Destruction or Liquidation. The Corporation shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Areas, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Corporation as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Corporation for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

Section 20.5. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.

Section 20.6. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 20.7. Indemnity. The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

Section 20.8. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 20.9 Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, RH of Indiana, L.P, Declarant herein, has executed this Declaration of Covenants, Conditions and Restrictions as of the date first above written.

RH of INDIANA, L.P., an Indiana limited partnership

By: RH BUILDERS OF INDIANA, INC., an Indiana corporation, its general partner

By:   
Kenneth E. Windler, Vice President of Operations

CHICAGO TITLE

STATE OF INDIANA            )  
                                          ) SS:  
COUNTY OF Marion        )

Before me, a Notary Public in and for said County and State, personally appeared Kenneth E. Windler, known to me to be the Vice President of Operations of the general partner of RH of Indiana, L.P., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions as such officer acting for and on behalf of said limited partnership, and who having been duly sworn, stated that any representations therein contained are true.

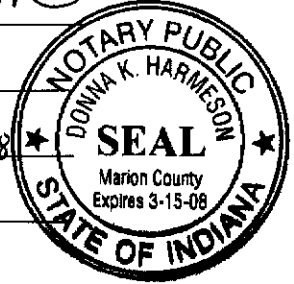
Witness my hand and Notarial Seal this 2<sup>ND</sup> day of SEPTEMBER, 2005.

*Donna K. HARMESON*

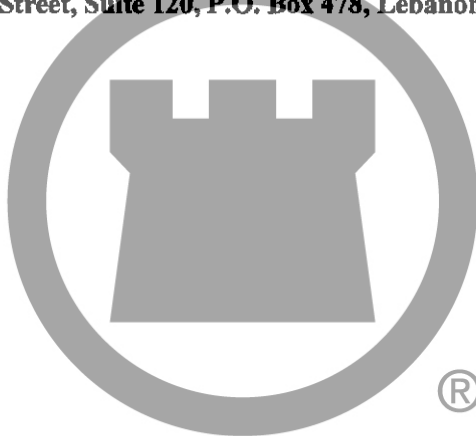
Printed: Donna K. HARMESON

My Commission Expires: 03/15/08

County of Residence: Marion



This instrument prepared by **MELISSA R. GARRARD**, Attorney at Law  
222 West South Street, Suite 120, P.O. Box 478, Lebanon, Indiana 46052



CHICAGO TITLE



Exhibit A

BOOK 339 PAGE 756

A part of the East Half of the Northeast Quarter of Section 33, Township 15 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at a cross on a stone at the southeast corner of said half-quarter section; thence North 0 degrees 17 minutes 42 seconds West (assumed bearing) along the east line of said section 357.47 feet (21½ rods by that certain decree in partition dated March 27, 1879, and spread upon Order Book 21, page 161 et seq., in the office of the Clerk of the Hendricks Circuit Court) to the center of the so-called National Road (Cumberland Road by statute); thence South 66 degrees 14 minutes 00 seconds West along the center of said road (not coincident with the center line of the westbound lane of U. S. 40) 138.60 feet to the southwest corner of the 72-acre parcel of land assigned and set apart to Esther Blair by virtue of said decree in partition; thence North 7 degrees 04 minutes 06 seconds West along the west line of said 72-acre parcel 41.76 feet to the point of beginning of this description, which point is on the northwestern boundary of said National Road: FROM SAID BEGINNING POINT South 66 degrees 14 minutes 00 seconds West along said northwestern boundary 177.55 feet (172.11 feet by Deed Record 297, page 418, in the office of the Recorder of the aforesaid county) to the southeast corner of that certain 1-acre parcel of land described in Deed Record 166, pages 98-99, in said Recorder's office, which southeast corner is North 66 degrees 14 minutes 00 seconds East 80.686 feet, measured along said northwestern boundary, from the east line of that certain 6.99-acre parcel of land described in Deed Record 162, page 185, in said Recorder's office; thence North 7 degrees 08 minutes 00 seconds West parallel with the east line of said 6.99-acre parcel 563.25 feet (565 feet by said Deed Record 297, page 418) to the southeastern line of that certain 40.07-acre parcel of land described in Deed Record 159, page 5, in said Recorder's office; thence North 66 degrees 14 minutes 00 seconds East along said southeastern line 178.21 feet (172.11 feet by said Deed Record 297, page 418) to the west line of the aforesaid 72-acre parcel; thence South 7 degrees 04 minutes 06 seconds East along said west line 553.44 feet (565 feet by said Deed Record 297, page 418) to the point of beginning; containing 2.204 acres, more or less, together with all rights in the National Road and U. S. 40 that are appurtenant and peculiar to the premises above described as well as those that are in common with the public. Subject to zoning, restrictions, encumbrances and easements of record.

A part of the Southwest Quarter of Section 27, a part of the Southeast Quarter of Section 28, a part of the Northeast Quarter of Section 33, and a part of the Northwest Quarter of Section 34, all in Township 15 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a point on the west line of said Section 34 that is North 0 degrees 17 minutes 42 seconds West (assumed bearing) 357.47 feet (21 1/2 rods by that certain decree in partition dated March 27, 1879, and spread upon Order Book 21, page 161 et seq., in the office of the Clerk of the Hendricks Circuit Court), measured along said section line, from a cross on a stone at the southwest corner of the Northwest Quarter of said Section 34, which point of beginning is in the center of the so-called National Road (Cumberland Road by statute); thence North 66 degrees 14 minutes 00 seconds East along the center of said road (not coincident with the center line of the westbound lane of U.S. 40) 500.37 feet; thence North 66 degrees 20 minutes 07 seconds East along the center of said National Road 524.74 feet to the southeast corner of the 72-acre parcel of land assigned and set apart to Esther Blair by virtue of said decree in partition; thence North 10 degrees 57 minutes 12 seconds West along the east line of said 72-acre parcel 1,949.62 feet to a point on the south line of said Section 27 that is North 88 degrees 57 minutes 24 seconds East 580.13 feet, measured along said south line, from the southwest corner of said Section 27, and which is South 88 degrees 57 minutes 24 seconds West 2,124.25 feet, measured along said south line, from an iron pin set in concrete (formerly a stone) at the southeast corner of the Southwest Quarter of said Section 27; thence North 10 degrees 57 minutes 12 seconds West along the east line of said 72-acre parcel (and said east line prolonged) 994.21 feet to the center line of the former railroad of The Consolidated Rail Corporation; thence South 75 degrees 26 minutes 42 seconds West along said center line 410.61 feet to a point on the east line of said Section 28 that is North 0 degrees 24 minutes 33 seconds West 883.49 feet, measured along said east line, from the southeast corner of said Section 28, and which is South 0 degrees 24 minutes 33 seconds East 1,789.82 feet, measured along said east line, from a stone at the northeast corner of the Southeast Quarter of said Section 28; thence South 75 degrees 26 minutes 42 seconds West along said center line 2,773.27 feet to the west line of the Southeast Quarter of said Section 28; thence South 0 degrees 30 minutes 55 seconds East along said west line 241.78 feet to a cross on a stone at the southwest corner of said quarter section; thence North 88 degrees 49 minutes 22 seconds East along the south line of said Section 28 a distance of 1,014.92 feet; thence South 0 degrees 14 minutes 07 seconds East parallel with the west line of the Northeast Quarter of said Section 33 a distance of 2,079.10 feet to the northwest corner of that certain 10.19-acre parcel of land described in a warranty deed dated October 12, 1859, and entered for record in Deed Record 23, page 363, in the office of the Recorder of the aforesaid county; thence North 88 degrees 42 minutes 17 seconds East along the north line of said 10.19-acre parcel 725.38 feet (10.88 chains by said deed) to the northeast corner of said parcel; thence South 7 degrees 08 minutes 00 seconds East along the east line of said 10.19-acre parcel 599.26 feet (9 chains by said deed) to the southeast corner of said parcel; thence North 88 degrees 48 minutes 00 seconds East along the south line of the East Half of the Northeast Quarter of said Section 33 a distance of 25.08 feet to the center of the aforesaid National Road at the southeast corner of that certain 57.26-acre parcel of land described in a warranty deed dated March 15, 1858, and entered for record in Deed Record 21, page 536, in said Recorder's office, which corner is North 88 degrees 48 minutes 00 seconds East 488.90 feet (incorrectly said in certain old deeds to be 7.31 chains), measured along said south line, from where a stone once marked the southwest corner of said half-quarter section, and which corner of said parcel is also South 88 degrees 48 minutes 00 seconds West 854.43 feet, measured along said south line, from a cross on a stone at the southeast corner of said half-quarter section; thence North 7 degrees 08 minutes 00 seconds West along the east line of said 57.26-acre parcel 605.00 feet; thence North 66 degrees 14 minutes 00 seconds East parallel with the center of said National Road 793.50 feet to the west line of the aforesaid 72-acre parcel; thence South 7 degrees 04 minutes 06 seconds East along said west line 605.21 feet to the center of said National Road; thence North 66 degrees 14 minutes 00 seconds East along said center line 138.60 feet to the point of beginning; containing 10.560 acres, more or less, in said Section 27, containing 34.733 acres, more or less, in said Section 28; containing 78.356 acres, more or less, in said Section 33, and containing 37.788 acres, more or less, in said Section 34. Containing in all 161.437 acres, more or less, which area includes rights of way for the National Road and U.S. 40. The portion of the above-described real estate which is not embraced by said rights of way contains 160.258 acres, more or less. Subject to zoning, restrictions, encumbrances, highways and easements of record.

A part of the Southwest Quarter of Section 27, a part of the South Half of Section 28, and a part of the Northwest Quarter of Section 33, all in Township 15 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at an iron pin topped with an aluminum cap at the northwest corner of the West Half of the Southwest Quarter of said Section 28; thence North 88 degrees 54 minutes 08 seconds East (assumed bearing) along the north line of said half-quarter section 1,349.45 feet to a stone at the northeast corner of said half-quarter section; thence North 88 degrees 54 minutes 29 seconds East along the north line of the East Half of the Southwest Quarter of said Section 28 a distance of 4.17 feet to the point of beginning of this description: FROM SAID BEGINNING POINT North 88 degrees 54 minutes 29 seconds East along the north line of said half-quarter section 1,333.93 feet to a point on the west line (prolonged northward) of Plainfield Manor, Section 1, (the plat of which is entered for record in Plat Book 8, page 70, in the office of the Recorder of the aforesaid county), which point is South 88 degrees 54 minutes 29 seconds West 0.63 feet, measured along said north line, from the center of said Section 28; thence South 0 degrees 25 minutes 27 seconds East along said prolonged west line 2.17 feet to the northwest corner of said Plainfield Manor, Section 1; thence South 0 degrees 25 minutes 27 seconds East along said west line 240.002 feet to the southwest corner of Lot 1 in said Plainfield Manor, Section 1; thence North 88 degrees 55 minutes 58 seconds East along the south line of said Plainfield Manor, Section 1, a distance of 1.020 feet to the west line of the Southeast Quarter of said Section 28; thence North 88 degrees 55 minutes 58 seconds East along said south line 824.159 feet to the northwest corner of Lot 22 in said Plainfield Manor, Section 1; thence South 1 degree 04 minutes 02 seconds East 160.000 feet to the southwest corner of said Lot 22; thence South 37 degrees 58 minutes 06 seconds East 353.222 feet to the westernmost corner of Lot 19 in said Plainfield Manor, Section 1; thence South 24 degrees 04 minutes 02 seconds East 405.000 feet to the southernmost corner of Lot 17 in said Plainfield Manor, Section 1; thence North 56 degrees 25 minutes 58 seconds East 116.000 feet to the westernmost corner of Lot 23 in Plainfield Manor, Section 2, (the plat of which is entered for record in Plat Book 9, page 48, in said Recorder's office); thence South 34 degrees 34 minutes 02 seconds East 220.000 feet to the southernmost corner of said Lot 23; thence along the southeastern line of said lot Northeasterly 178.867 feet on an arc to the left having a radius of 297.053 feet and subtended by a long chord having a bearing and length of North 38 degrees 10 minutes 58 seconds East 176.177 feet; thence North 20 degrees 55 minutes 58 seconds East along said southeastern line 31.487 feet; thence South 55 degrees 37 minutes 50 seconds East 51.408 feet to the northwestern line of Lot 40 in said Plainfield Manor, Section 2; thence South 20 degrees 55 minutes 58 seconds West along said northwestern line 19.544 feet; thence along said northwestern line Southwestly 95.477 feet on an arc to the right having a radius of 347.055 feet (347.053 feet by said Plat Book 9, page 48) and subtended by a long chord having a bearing and length of South 28 degrees 48 minutes 52 seconds West 95.176 feet to the westernmost corner of said lot; thence South 29 degrees 56 minutes 57 seconds East 309.141 feet to the southernmost corner of said lot; thence North 58 degrees 00 minutes 11 seconds East 195.744 feet to southwest corner of Lot 38 in said Plainfield Manor, Section 2; thence North 85 degrees 42 minutes 53 seconds East 369.238 feet to the southeast corner of Lot 36 in said Plainfield Manor, Section 2; thence South 4 degrees 52 minutes 31 seconds East 40.000 feet to the southwest corner of Lot 34 in said Plainfield Manor, Section 2; thence South 89 degrees 14 minutes 16 seconds East 206.428 feet to the southeast corner of said Lot 34; thence North 85 degrees 07 minutes 29 seconds East 50.000 feet to the southeast corner of Lisa Lane; thence North 4 degrees 52 minutes 31 seconds West along the east line of said Lisa Lane 20.000 feet to the southwest corner of Lot 33 in said Plainfield Manor, Section 2; thence North 85 degrees 07 minutes 29 seconds East along the south line of said lot 209.01 feet to the west line of that certain 35.2-acre parcel of land described in Deed Record 216, page 97, in said Recorder's office; thence South 4 degrees 45 minutes 42 seconds East along said west line 211.93 feet to the west line of said Section 27; thence South 4 degrees 45 minutes 42 seconds East along the west line of said 35.2-acre parcel 116.75 feet to the northwestern boundary of the right of way of the former railroad of The Consolidated Rail Corporation as described in Deed Record 136, page 272, in said Recorder's office; thence South 73 degrees 36 minutes 05 seconds West along said northwestern boundary 9.22 feet to a point on the east line of said Section 28 that is South 0 degrees 24 minutes 33 seconds East 1,635.13 feet, measured along said east line, from a stone at the northeast corner of the Southeast Quarter of said Section 28; thence South 73 degrees 36 minutes 05 seconds West along said northwestern boundary 2,797.52 feet to the east line of the Southwest Quarter of said Section 28 at a point thereon that is 60.00 feet northwesterly, measured at right angles, from the center line of said former railroad; thence South 0 degrees 30 minutes 55 seconds East along said east line and along said railroad boundary 10.31 feet to a point 50.00 feet northwesterly, measured at right angles, from said center line; thence South 75 degrees 26 minutes 42 seconds West along said northwestern boundary parallel with said center line 386.01 feet; thence South 75 degrees 20 minutes 08 seconds West along said northwestern boundary parallel with said center line 864.60 feet to the north line of said Section 33 at a point thereon that is North 88 degrees 56 minutes 01 second East 1,474.00 feet, measured along said north line, from a stone at the northwest corner of said Section 33; thence South 75 degrees 20 minutes 08 seconds West along said northwestern boundary parallel with said center line 323.85 feet; thence North 0 degrees 31 minutes 07 seconds West 76.14 feet to the south line of said Section 28 at a point thereon that is North 88 degrees 56 minutes 01 second East 1,159.96 feet, measured along said south line, from a stone at the southwest corner of said section; thence North 0 degrees 31 minutes 07 seconds West 1,338.39 feet; thence North 88 degrees 54 minutes 33 seconds East 187.23 feet; thence North 0 degrees 17 minutes 27 seconds West 1,338.12 feet to the point of beginning; containing 0.012 acres, more or less, in said Section 27, containing 153.956 acres, more or less, in said Section 28; and containing 0.274 acres, more or less, in said Section 33. Containing in all 154.242 acres, more or less. Subject to zoning, restrictions, encumbrances, highways, and easements.

A part of the Southwest Quarter of Section 28, a part of the East Half of the Southeast Quarter of Section 29, and a part of the Northwest Quarter of Section 33, all in Township 15 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at an iron pin topped with an aluminum disk at the northwest corner of the Southwest Quarter of said Section 28; thence South 0 degrees 32 minutes 32 seconds East (assumed bearing) along the west line of said Section 28 a distance of 600.153 feet; thence North 88 degrees 57 minutes 19 seconds East 677.194 feet; thence North 0 degrees 37 minutes 55 seconds West 423.60 feet; thence South 76 degrees 23 minutes 35 seconds East 231.13 feet; thence South 87 degrees 47 minutes 07 seconds East 14.71 feet to the southwest corner of that certain 1.03-acre parcel of land described in Deed Record 301, page 204, in the office of the Recorder of the aforesaid county; thence South 77 degrees 09 minutes 52 seconds East along the south line of said parcel 178.85 feet; thence North 0 degrees 12 minutes 33 seconds West along the east line of said parcel 279.78 feet to the north line of the West Half of the Southwest Quarter of said Section 28; thence North 88 degrees 54 minutes 09 seconds East along said north line 252.45 feet to a stone at the northeast corner of said half-quarter section; thence North 88 degrees 54 minutes 29 seconds East along the north line of the East Half of the Southwest Quarter of said Section 28 a distance of 4.17 feet; thence South 0 degrees 17 minutes 27 seconds East 1,338.12 feet; thence South 88 degrees 54 minutes 33 seconds West 187.23 feet; thence South 0 degrees 31 minutes 07 seconds East 1,338.39 feet to a point on the north line of said Section 33 that is North 88 degrees 56 minutes 01 second East 1,159.96 feet, measured along said section line, from a stone at the northwest corner of said Section 33; thence South 0 degrees 31 minutes 07 seconds East 76.14 feet to the northwestern boundary of the right of way of the former railroad of The Consolidated Rail Corporation; thence South 75 degrees 20 minutes 08 seconds West along said northwestern boundary 1,198.64 feet to the west line of said Section 33; thence North 0 degrees 08 minutes 08 seconds West along said west line 358.00 feet to a stone at the northwest corner of said Section 33, the same being the southwest corner of said Section 28 and the southeast corner of said Section 29; thence North 0 degrees 32 minutes 32 seconds West along the line between said Sections 28 and 29 a distance of 494.00 feet to a corner of Andrews' Liberty Meadows, Amended, as entered for record in Plat Book 9, page 63, in said Recorder's office; thence South 88 degrees 32 minutes 55 seconds West along a north line of said Andrews' Liberty Meadows 859.14 feet (859.29 feet by said Plat Book 9, page 63) to a corner of said Andrews' Liberty Meadows; thence North 0 degrees 33 minutes 49 seconds West along an east line of said Andrews' Liberty Meadows 2,181.96 feet (2,181.39 feet by said Plat Book 9, page 63) to the north line of the East Half of the Southeast Quarter of said Section 29; thence North 88 degrees 33 minutes 40 seconds East along said north line 859.95 feet to the point of beginning; containing 65.618 acres, more or less, in said Section 28, containing 43,048 acres, more or less, in said Section 29; and containing 5.782 acres, more or less, in said Section 33. Containing in all 114.448 acres, more or less. Subject to zoning, restrictions, encumbrances, highways, and easements.

Given under my hand and seal this 7th day of October 1902:

BOOK 339 PAGE 759

61

Part of the Southeast quarter of the Northeast quarter AND a part of the Northeast quarter of the Southeast quarter in Section 33, Township 15 North of Range 1 East, in Guilford Township, Hendricks county, Indiana, described as follows, to-wit:

Beginning 854.5 feet West of the stone at the East half mile corner of said Section 33, which point is the intersection of the East and West half section line with the center line of the West bound land of U.S. Highway 40; thence reflecting left 22 degrees 23 minutes and running southwesterly on said center line 202.1 feet; thence deflecting right 106 degrees 29 minutes and running Northwesterly 677.6 feet; thence deflecting right 95 degrees 50 minutes and running Easterly 194.9 feet to the East line of a lane; thence deflecting right 84 degrees 10 minutes and running Southeasterly along said East line 599.5 feet to the place of beginning, containing 2.84 acres, more or less. Subject to all legal highways, rights of way and easements of record.



CHICAGO TITLE